

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION

In re: Cornerstone Log & Timber Homes, Inc. Case No. 09-04503-8-RDD
Debtor.

Address: P.O. Box 438 Chapter: 7
Red Oak, NC 27868

MOTION FOR RELIEF FROM STAY TO PERMIT
LITIGATION OF STATE COURT ACTION

NOW COME James and Deborah Hussmann (hereinafter “Movant”), by and through their undersigned attorney, David F. Mills, and hereby move the Court for an order modifying the automatic stay pursuant to Section 362(d) so as to enable the Movant to continue litigating a civil action pending in the Rutherford County Court, North Carolina, Docket Number 09-CvS-455, and captioned “James and Deborah Hussmann v. Cornerstone Log & Timber Homes, Inc. (hereinafter “Civil Action”). In support of said motion, the Movant respectfully shows unto the Court as follows:

1. The Movant initiated the Civil Action by filing a Complaint on March 27, 2009, seeking actual and consequential damages of the Debtor for breach of contract. A true and correct copy of the Complaint is attached hereto as Exhibit “A” and incorporated by reference.

2. The Movant obtained Entry of Default in the Civil Action against the Debtor on April 30, 2009. A true and correct copy of the default entry is attached hereto as Exhibit “B” and incorporated by reference.

3. The Debtor filed its petition for relief under Chapter 7 on May 30, 2009.

4. Upon information and belief, the Movant has certain rights to recover their losses from the North Carolina Homeowner’s Recovery Fund. Such recovery may only be considered, however, after the Movant obtains a judgment that cannot be collected.

5. The Movant is requesting that the automatic stay be modified so as to allow the Movant to proceed to litigate the Civil Action and to take such steps as necessary to determine the amount of its damages proximately resulting from the Debtor’s breach of contract.

6. Granting relief from the automatic stay is in the best interest of judicial economy and will not prejudice the interest of the Trustee or other parties in interest, nor will it impair the administration of the Estate.

7. The facts as alleged herein constitute good cause for granting relief from the automatic stay pursuant to 11 U.S.C. § 362(d).

WHEREFORE, the Movant prays unto the Court that the automatic stay imposed by 11 U.S.C. §362 be modified so as to permit James and Deborah Hussmann, the Movant, to pursue the Civil Action in state court in accordance with applicable state law; and to engage in discovery with the Debtor and to do such other acts as are part of or ancillary to the Civil Action under applicable state law. The Movant further requests that the 10-day stay imposed by Rule 4001(a)(3) is not applicable to the Court's order on this motion; and the Movant respectfully requests such other and further relief as to the Court seems just and proper.

This the 28th day of July, 2009.

DAVID F. MILLS, P.A.
1559-B Booker Dairy Rd.
Smithfield, NC 27577
Telephone: (919) 934-7235
Facsimile: (919) 989-1529

By: /s/ David F. Mills
David F. Mills, State Bar No: 18326
Counsel for Movant, James and Deborah Hussmann

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NOTICE OF MOTION

TO: TRUSTEE, DEBTOR, DEBTOR'S ATTORNEY, AND BANKRUPTCY
ADMINISTRATOR

NOTICE IS HEREBY GIVEN of the Motion for Relief from Stay to Permit Litigation of the Civil Action filed in Rutherford County, North Carolina, captioned James and Deborah Hussmann v. Cornerstone Log & Timber Homes, Inc., File No. 09-CvS-455, in order to allow Movant to liquidate its claim against the Debtor; and

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response and request for a hearing is made by the Debtor, Trustee, or other parties in interest in writing to the Clerk of this Court within 15 (fifteen) days from the date of this Notice; and

FURTHER NOTICE IS HEREBY GIVEN that if a response and a request for a hearing is filed by the Debtor, Trustee, or other parties in interest named herein in writing within the time indicated, a hearing will be conducted on the Motion and response thereto at a date, time and place to be later set by this Court and all interested parties will be notified accordingly. If no request for a hearing is timely filed, the lack of response will be deemed consent to James and Deborah Hussmann's Motion and the Court may rule thereon ex parte without further Notice.

DATE OF NOTICE: July 28, 2009.

DAVID F. MILLS, P.A.
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CERTIFICATE OF SERVICE

I, David F. Mills, Attorney at Law, 1559-B Booker Dairy Rd., Smithfield, North Carolina 27577, certify:

That I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age;

That on the 28th day of July, 2009, I served a copy of foregoing Notice of Motion for Relief from Stay to Permit Litigation of State Court Action on the following:

VIA FIRST CLASS MAIL

Cornerstone Log & Timber
Homes, Inc.
Attn: Managing Agent
P.O. Box 438
Red Oak, NC 27868

VIA CM/ECF

Kevin L. Sink
Attorney for Debtor
Nicholls & Crampton, P.A.
P.O. Box 18237
Raleigh, NC 27619

VIA CM/ECF

Stephen L. Beaman
Chapter 7 Trustee
And
Marjorie K. Lynch
Bankruptcy Administrator

I certify under penalty of perjury that the foregoing is true and correct.

This the 28th day of July, 2009.

DAVID F. MILLS, P.A.
1559-B Booker Dairy Rd.
Smithfield, NC 27577
Telephone: (919) 934-7235
Facsimile: (919) 989-1529

By: /s/ David F. Mills
David F. Mills, State Bar No: 18326
Counsel for Movant, James and Deborah Hussmann